IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

PAKA RAM VERSUS. STATE OF RAJASTHAN

S.B. Criminal Appeal No.197/1988 under Section 374 (2) Cr.P.C. against the Judgment dated 28.04.1988 in Sessions Case No.59/86 (041/84), passed by Sh. Mangal Chand Tailor, RHJS, Additional Sessions Judge Bali.

DATE OF JUDGMENT : February09, 2007.

P R E S E N T

HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. Ram Rakh Vyas,for the appellant.
Mr.L.R.Upadhyaya P.P.

BY THE COURT:

1. This appeal is directed against the judgment and order dated 28.4.88 passed by the Additional Sessions Judge Bali , whereby he convicted and sentenced accused appellant Paka Ram s/o Pannaji, after trial in Sessions Case No.59/86 (041/84) under Section 201 IPC and sentenced him to suffer imprisonment to undergo 1 years rigorous imprisonment along with fine of Rs.2,000/- and in default to further undergo six months rigorous imprisonment.

2. The prosecution story is woven like this:-

On 20.3.84 statement of Gheesa Ram was recorded by Dy.S.P.Magartalab district Pali and on the basis of his statement Ex.P-17 F.I.R. No.8/20.3.84 was registered at P.S. Mangartalab wherein it is mentioned that Moti and Pakiya were real brothers and living in village Dayalana near well. Moti was not mentally well, therefore, arrangement of food was done by Pakiya. On the fateful night of 8.3.84 & 9.3.84 Moti was sleeping on the well but in the morning dead body of Moti was carried on by accused Bagta,Pakiya and Achala and the body of Moti was put to funeral and when from informative sources of Circle Officer, Bali Police, police came to know Moti has died and dead body was burnt, therefore, inquiry was conducted and during inquiry, statement of Gheesa (P.W.17) was recorded and it was came to notice of the police officer from Gheesa (PW 17) that he had seen accused persons took dead body on bullock-cart and blood was on turban of Bagta and on asking Bagta how blood stains come are on his turban then he said that at the time of placing dead body on bullock-cart, blood stains come on his turban. On calling Pakiya he went to his house and saw there was injuries on head, hand and leg of the deceased . Hand was broken and seeing injuries it was suspected that murder of Moti was committed. On asking Achla and Bagta they have admitted beating to Moti and thereafter death of

Moti. Family members have not lodged report regarding this incident. On the basis of statement of Gheesa Ram, report was lodged and case was registered under Section 302, 201 IPC. During investigation, accused Bagta, Pakiya and Achala were arrested. During investigation, cloths of the accused persons and weapon of offence dantli etc were recovered from 'khalihan' which blood stained. Other usual memos were prepared and challan against accused appellant and others was filed under section 302,201 IPC before the Musif & Judicial Magistrate, Desuri, who committed this case to the Court of Sessions Judge for trial as the case is exclusively triable by Sessions. Judge. Charge was read over and accused pleaded not guilty and claimed for trial.

Prosecution has produced 20 witnesses and exhibited 22 documents. Thereafter statement under Section 313 Cr.P.C. was recorded. Two defence witness was produced in support of their case.

3. Heard the learned counsel for the appellant and the learned Public Prosecutor and perused the record of the case .

4. Learned counsel for the accused appellant contended that the appellant is the real brother of deceased Moti who was a mad-man who died and was not killed by the appellant or any one. It is further contended by the counsel for the accused

appellant that appellant has not put fire on dead body of his brother and all the Ghanchi community persons were there in the funeral and they put fire to the dead body and even he was not present at that time. It is submitted that that accused appellant is a very weak mind person and has no intention of destroying the evidence in attending funeral process of dead body of Moti. All other accused persons have been acquitted therefore,on this count without committing crime accused appellant cannot be punished under Section 201 IPC and the prosecution could not prove the guilt of the accused so this appeal should be allowed and accused appellant may be acquitted.;

Per contra, learned Public Prosecutor supported the impugned finding and urged that the appellant was rightly convicted and sentenced. So the appeal must be dismissed.

5. First Part of Section 201 IPC reads as under :-

> S.201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

6. To constitute offence under Section 201 IPC there must be disappearance of some evidence of the commission of offence. The first and foremost ingredient, prosecution is to prove

that the offence in respect of which evidence is made to dis-appear was committed. Thus, to establish the charge under section 201 IPC the prosecution must first prove that offence has been committed not merely suspicion that might have been committed, and that the accused knowing or having reason to believe that such an offence has been committed, and with the intend to screen the offender from legal punishment,.had caused evidence thereafter to dis-appear. The proof of commission of offence is an essential requisite for bringing home for offence under Section 201 IPC.

7. Hon'ble Supreme Court in case of **Palvinder Kaur vs State of Punjab AIR 1952 SC 354** formulated some guidelines which are :

(a) that an offence has been committed,

(b) that the accused knew or had reason to believe that an offence has been committed;

(c) the accused intended to screen the offender, whether that offender be himself or another person, and

(d) that the accused has disposed of or concealed that dead body with such intention.

8. Factually situation emerges from the material on record that deceased Moti was a mad-man for last 15-20 years and he was not using turban. The alleged incident pertains to 8/9th March 1984

whereas report Ex.P-17 was lodged on 20.3.84 i.e. 11 days after the incident whereas distance of police station was only 10 K.M. And this was reported by P.W.17 Gheesa Ram s/o Vela and only on the evidence of this witness the appellant has been convicted under Section201 IPC.

9. After going through the record and careful perusal of the statement of Gheesa Ram P.W.17 and police statement Ex.P-16 the contradictions about portion C to D of Ex.P-16 of the police statement with the statement of witness,the major contradiction to Achla and Bagta did extra judicial confession after half an hour but in the statement in Court after 10-11 days and the fact that he was also present in funeral of the deceased and not reported to police prior. Thus, the statement of this witness cannot be treated reliable and trusthworthy and except that there is no reliable evidence for fact that Moti was killed and thus the evidence of this witness Gheesa Ram P.W.17 being not reliable . There is no trustworthy evidence by the prosecution to prove the guilt of the accused appellant and deserves to be acquitted and the appeal should be accepted and the learned Judge was not right in convicting the appellant so judgment of the trial court should be set aside.

10. Consequently, the appeal is allowed and the judgment dated 28.4.1988 passed in Sessions Case No.59/86 (041/84) by the

Additional Sessions Judge, Bali is quashed and set aside and appellant Paka Ram is acquitted of the charges levelled against him, He is on bail. His bail bonds are hereby discharged.

[CHATRA RAM JAT],J.

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